Supreme Court, U.S.
FILED

No. 98 1871 MAY 20 1999

OF THE CLERK

In The

Supreme Court of the United States

BILLY DALTON FROST,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

DOUGLAS A. TRANT
Counsel of Record
900 S. Gay Street
Suite 1502
Knoxville, TN 37902
(423) 525-7980

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN NOT REOPENING THE MATTER BASED ON NEWLY DISCOVERED EVIDENCE WHEN THE PETITIONER CLEARLY PRODUCED NEWLY DISCOVERED EVIDENCE WHICH WOULD SUBSTANTIALLY REDUCE HIS SENTENCE.

II. WHETHER THE MOTION TO REOPEN SHOULD BE GRANTED WITH THE COURT CONSIDERING SUPPRESSION OF EVIDENCE OF ALLEGED COCONSPIRATORS' TESTIMONY WHEN SUCH TESTIMONY HAD BEEN OBTAINED BY THE GOVERNMENT THROUGH GRANTING SENTENCE REDUCTIONS TO THE WITNESSES WHICH WERE THINGS OF VALUE UNDER 18 U.S.C. § 201(c).

LIST OF ALL PARTIES TO THE PROCEEDING

The following is a list of all parties to the proceeding in the United States Court of Appeals for the Fourth Circuit whose judgment is sought to be reviewed in this case:

United States of America

Billy Dalton Frost

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TABLE OF AUTHORITIES

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CASES CITED:

United States v. Singleton, D.C. No. 96-10054-05-FGT (10th Cir. July 1, 1998) 2, 4

STATUTES CITED:

18 U.S.C. § 201(c) 1, 4

28 U.S.C. § 2255.....1, 3

OPINIONS BELOW

The United States Court of Appeals for the Fourth Circuit affirmed the District Court on December 15, 1998, and is unpublished and has been reproduced in the Appendix at 2a-3a. The Order from the United States Court of Appeals for the Fourth Circuit denying the petition for rehearing was denied on March 8, 1999, and is unpublished and has been reproduced in the Appendix at 1a.

SUPREME COURT JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was filed on March 8, 1999. This Petition for Writ of Certiorari is filed pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS CONSTRUED

28 U.S.C. § 2255

18 U.S.C. § 201(c)

STATEMENT OF THE CASE

On March 17, 1998, the Petitioner filed a motion to reopen his petition to vacate his sentence pursuant to 28 U.S.C. § 2255 or, in the alternative, motion for delayed appeal. On March 20, 1998, the District Court denied his motion. On March 31, 1998, the Petitioner filed his notice

of appeal to the United States Court of Appeals for the Fourth Circuit. On July 14, 1998, he submitted his recent authority, the case of *United States v. Singleton*, D.C. No. 96-10054-05-FGT (10th Cir. July 1, 1998), from the United States Court of Appeals for the Tenth Circuit which has since been vacated and reversed by an en banc decision that Petitioner would rely on the same argument before the Supreme Court. On December 15, 1998, the United States Court of Appeals for the Fourth Circuit affirmed the District Court. (Appendix at 2a-3a). On December 30, 1998, the Petitioner filed his petition to rehear. On March 8, 1999, the Petitioner's petition to rehear was denied. (Appendix at 1a).

SUMMARY OF ARGUMENT

It is certainly appropriate for the District Court to reopen a case when evidence is brought before it which substantially shows that a Petitioner is innocent of nearly all the relevant conduct used by the Court in determining what his sentence should be.

It is also important for the District Court to consider whether witnesses against the Defendant testified in return for a thing of value, that is a sentence reduction given to said witnesses by the government in exchange for their testimony.

ARGUMENT

I. WHETHER THE DISTRICT COURT ERRED IN NOT REOPENING THE MATTER BASED ON NEWLY DISCOVERED EVIDENCE WHEN THE PETITIONER CLEARLY PRODUCED NEWLY DISCOVERED EVIDENCE WHICH WOULD SUBSTANTIALLY REDUCE HIS SENTENCE.

The Petitioner came into possession of a taped conversation of David Ruckart after the petition to vacate his sentence pursuant to 28 U.S.C. § 2255 had been denied. From that conversation ample evidence could be presented that Mr. Frost was a minor player in this alleged conspiracy and certainly should have far less cocaine attributed to him than what he was sentenced to. He should have had, at worst, been attributed to a minimal role in the conspiracy. He certainly should have been held accountable for less than five kilograms of cocaine.

In addition, the Court relied on information concerning Larry Roscoe, who gave a sworn statement that Bill Frost had nothing to do with any cocaine and that Mr. Roscoe told Agents Taylor and Assistant United States Attorney Ken Bell that Mr. Frost had nothing to do with any cocaine in his presence. (Appendix at 4a).

II. WHETHER THE MOTION TO REOPEN SHOULD BE GRANTED WITH THE COURT CONSIDERING SUPPRESSION OF EVIDENCE OF ALLEGED COCONSPIRATORS' TESTIMONY WHEN SUCH TESTIMONY HAD BEEN OBTAINED BY THE GOVERNMENT THROUGH GRANTING SENTENCE REDUCTIONS TO THE WITNESSES WHICH WERE THINGS OF VALUE UNDER 18 U.S.C. § 201(c).

The Petitioner would ask this Court to consider as well whether 18 U.S.C. § 201(c) prohibits prosecutors for the government for giving things of value, that is sentence reductions in exchange for the testimony of witnesses. The Petitioner would rely on the very sound reasoning and judgment of the original panel of the Tenth Circuit in *United States v. Singleton* which was vacated and reversed by the Court en banc, but is the sound reasoning upon which 18 U.S.C. § 201(c) should be interpreted.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Petition for Writ Certiorari should be granted.

DOUGLAS A. TRANT
Counsel of Record
900 S. Gay Street
Suite 1502
Knoxville, TN 37902
(423) 525-7980

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
March 8, 1999

No. 98-6479
CR-92-253
CA-95-265-3-P

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

BILLY DALTON FROST
Defendant - Appellant

ORDER

The appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,

/s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-6479

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BILLY DALTON FROST,

Defendant-Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Robert D. Potter, Senior District Judge. (CR-92-253, CA-95-265-3-P)

Submitted: November 5, 1998 Decided: December 15, 1998

Before ERVIN, LUTTIG, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Douglas A. Trant, TRANT & ASSOCIATES, Knoxville, Tennessee, for Appellant. Kenneth Davis Bell, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

See Local Rule 36(c).

PER CURIAM:

Billy Frost appeals the district court's order denying his motion filed under 28 U.S.C. § 2255 (1994) (current version at 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998)), and his application for a writ of Audita Querela under 28 U.S.C. § 1651 (1994). We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. *United States v. Frost*, Nos. CR-92-253; CA-95-265-3-P (W.D.N.C. Mar. 23, 1998). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

To whom it may concern:

It has come to my attention that it has been said that I sold Bill Frost 2 kilos of cocaine. I took United States Customs Agent Ron Fay and United States Ken Bell in a sworn statement that Bill Frost went into the other room when he come into our home. I never saw him buy any drugs from anybody. I never at any time sold Bill Frost anything.

Larry Roscoe

6/10/95

BEFORE ME APPEARED LARRY ROSCOE, THIS 10TH DAY OF JUNE, 1995, AND WHO SIGNED THE ABOVE STATEMENT.

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

/s/ Kay Helms
NOTARY

[SEAL]

Mc Commission Expires: 2/1/96